

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**BONITA C ANDERSON
1150 RACE ST
DUBUQUE IA 52001**

**APAC CUSTOMER SERVICES
OF IOWA LLC
TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166 0283**

**AMENDED
Appeal Number: 05A-UI-06537-H2T
OC: 05-15-05 R: 04
Claimant: Respondent (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.19-38-a & b – Total and Partial Unemployment
Section 96.3-7 - Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 17, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on July 12, 2005. The claimant did not participate. The employer did participate through Bill Pitzer, Supervisor, and Sabrina Hurely, Staffing Coordinator.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant currently works for APAC as a telephone service representative part-time from

November 15, 1999. From late May 2005 through early June 2005, the employer did have regular full-time work available for the claimant as contemplated in the original contract of hire. The normal hours of work for the claimant are four hours per day five days per week. It is the claimant's choice to only work four hours per day and five days per week. The claimant was not sent home because work was not available for her. If the claimant missed work it was because she choose to take time off or because she called in sick. During the period for which the claimant filed weekly claims there was work available for her.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not partially unemployed.

Iowa Code section 96.19-38 provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which, while employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

An individual shall be deemed partially unemployed in any week in which the individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Because the claimant was offered her regular-time hours, she is not considered partially unemployed. Benefits are denied. Inasmuch as the employer is offering the same wages and hours as contemplated in the contract of hire, they are not liable for benefit charges to its account.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received benefits to which she was not entitled. Therefore, the claimant is overpaid \$443.00.

DECISION:

The June 17, 2005, reference 01, decision is reversed. The claimant is not partially unemployed and benefits are denied. The account of employer shall not be liable for charges. The claimant is overpaid \$443.00.

tkh/sc/pjs